(15)

No. 89-152

IN THE

Supreme Court of the United States

OCTOBER TERM, 1989

VERA M. ENGLISH,

Petitioner,

v.

GENERAL ELECTRIC COMPANY,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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BRIEF OF THE NUCLEAR MANAGEMENT AND RESOURCES COUNCIL, INC. AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

Whether Section 210 of the Energy Reorganization Act, which provides a comprehensive federal administrative remedy for employees at nuclear facilities as an integral part of the federal government's program to ensure safety in the operations of those facilities, preempts state law claims for intentional infliction of emotional distress arising out of alleged discrimination in the terms and conditions of employment in retaliation for reporting a safety violation at a nuclear facility that is fully compensable under Section 210.

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BRIEF OF THE NUCLEAR MANAGEMENT AND RESOURCES COUNCIL, INC. AS AMICUS CURIAE SUPPORTING RESPONDENT

INTEREST OF THE AMICUS CURIAE

The Nuclear Management and Resources Council, Inc. ("NUMARC"), is the organization of the nuclear power industry that is responsible for coordinating the combined efforts of all utilities licensed by the United States Nuclear Regulatory Commission ("NRC" or "Commission") to construct or operate nuclear power plants, and of other nuclear industry organizations, in all matters involving generic operational and technical issues affecting the industry. Every electric utility responsible for constructing or operating a commercial nuclear power plant in the United States is a member of NUMARC. In addition, NUMARC's members include major architect-engineering firms and all of the major nuclear

steam supply system vendors, including respondent General Electric Company.

Every member represented by NUMARC that is engaged in NRC-licensed activities is subject to the strictures of the nuclear regulatory scheme created by the Atomic Energy Act of 1954, as amended, including Section 210 of the Energy Reorganization Act, 42 U.S.C. § 5851 ("Section 210"), and to the regulatory oversight of the NRC (formerly the Atomic Energy Commission). NUMARC has an abiding interest in ensuring that the congressionally crafted regulatory scheme governing its members' operations is construed and applied in a manner consistent with the congressional goal of ensuring that nuclear facilities are constructed and operated in such a manner as to protect the health and safety of the public.

NUMARC believes that petitioner's claims are preempted by federal law and were thus correctly dismissed by the courts below. Further, it is NUMARC's view that the national objectives established by Congress in the Atomic Energy Act and administered by the NRC, including emphasis on early identification and remediation of potential nuclear safety problems at nuclear facilities, would be substantially impeded if employers in the industry were also subject to the vicissitudes of varying state law conceptions of what does, and does not, advance those policies.[1]

STATEMENT OF THE CASE

NUMARC adopts the Statement of the Case set forth in respondent General Electric Co.'s ("GE") brief. Nevertheless, we respectfully invite the Court's attention to the following record facts.

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[1] Pursuant to Rule 37 of the Rules of this Court, NUMARC has filed with the Clerk the parties' written consent to the submission of this Brief.

Having first sought remedies for alleged maltreatment at the hands of her employer before the Department of Labor under Section 210 of the Energy Reorganization Act, 42 U.S.C. § 5851 (Pet. App. 30a-56a), and before the NRC under 10 C.F.R. § 2.206 (Pet. App. 57a-58a), petitioner Vera M. English brought this diversity action in district court in 1987. Claiming that she had been wrongfully terminated and that respondent had intentionally caused her emotional distress, petitioner sought compensatory damages of "at least" some $1.3 million (J.A. 21) and punitive damages of approximately $2.3 *billion* (Pet. App. 6a). Specifically with regard to her emotional distress claim, petitioner alleged that "GE intentionally inflicted emotional distress on [her] as 'punishment' for her reporting violations to the NRC and to make an example of her." J.A. 20. She also alleged that her employer's actions constituted "extreme and outrageous conduct." *Id.* The district court summarized the particular conduct on which petitioner's claims had been based as follows:

> With respect to "extreme and outrageous" conduct plaintiff alleges that GE's management (1) removed her from her job in the Chemet Lab under guard as if she were a criminal, exposing her to contempt and ridicule; (2) assigned her to a degrading "make work" job; (3) derided her as paranoid; (4) barred her from employment in controlled areas; (5) subjected her to constant surveillance in the workplace; (6) isolated her from fellow workers and did not even permit her to eat in the company lunchroom with her fellow workers; and (7) conspired to fraudulently charge her with violations of safety and criminal statutes.

Pet. App. 27a.

The district court held that petitioner's claims fell squarely within the scope of Section 210, which constituted her exclusive remedy. Petitioner appealed the ruling on her emotional distress claim, and the Fourth Cir-

cuit agreed with the lower court that Section 210 preempted that claim. Petitioner obtained a writ of certiorari from this Court.

SUMMARY OF ARGUMENT

I.

In the federal legislation governing the nuclear industry enacted over the past four decades, Congress has completely occupied the field of nuclear safety regulation. Only rarely has it provided for a role by the states, and then only in narrowly limited circumstances. Section 210 was enacted as a part of the intricate and comprehensive federal scheme for ensuring the safe construction and operation of nuclear facilities. Its employee protection features are a means to that end, not an end in themselves. Section 210 therefore must be read *in pari materia* with the statutory scheme already in place when it was enacted. Such a reading compels the conclusion that, if Congress had intended to permit the states to provide an alternative and duplicative system of remedies for retaliation claims that fall within the ambit of Section 210, it surely would have said so.

This Court's decisions in *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Development Comm'n*, 461 U.S. 190 (1983), and *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984), recognize the complete occupation of this field by Congress. Those decisions also affirm that, absent an express provision authorizing the states to act in this area or clear and abundant evidence of a congressional intent to permit them to do so, state law is precluded from any role. Neither of these factors exists with respect to claims, such as petitioner's, that are cognizable under Section 210. There thus is no basis for finding that petitioner's claims are within any of the limited exceptions to the broad preemptive sweep of federal nuclear energy law.

II.

Even had Congress not occupied the field of nuclear safety regulation, petitioner's claims would be preempted for a further reason: application of state law to facts such as those alleged in her complaint would interfere with full realization of the purposes embodied in the federal regulatory scheme. The much longer statute of limitations applicable to petitioner's state law claim subverts the provisions in federal law calculated to ensure that information about potential nuclear safety issues comes to the attention of federal authorities in timely fashion. Further, state law apparently would permit awards of punitive damages irrespective of an NRC decision to impose, or not to impose, civil penalties provided for in the federal regulatory scheme. And state law contains no provision comparable to Section 210(g), which would preclude those who violate federal nuclear safety requirements from obtaining a remedy. These differences inevitably give rise to the potential for state law interference with the fulfillment of federal objectives.

III.

The decisions below are also entirely consistent with this Court's preemption decisions under the Labor Management Relations Act, 29 U.S.C. §§ 141-187 ("LMRA"). The Court has held that state laws regulating conduct arguably prohibited by the LMRA are preempted because Congress has committed the resolution of such matters to the National Labor Relations Board ("NLRB"), just as Congress has designated the Secretary of Labor and the NRC as the federal agencies with authority to address retaliation claims brought by nuclear industry employees.

Cases cited by petitioner in which the LMRA has been held not to preempt state claims have been grounded in the fact that the NLRB is generally powerless to provide any remedy for personal injuries of the sort that state law may address. Section 210, on the other hand, supplies a remedy for retaliation claims such as petitioner's.

Because petitioner's claim here is essentially the same claim that she litigated before the Secretary of Labor under Section 210, it clearly does not involve a collateral matter only peripherally related to the subjects of interest in Section 210 proceedings. Furthermore, federal occupation of the field of nuclear safety regulation leaves no room for a balancing of competing state and federal interests in the issues raised in the petitioner's complaint.

ARGUMENT

I. CONGRESS INTENDED SECTION 210 OF THE ENERGY REORGANIZATION ACT TO BE THE EXCLUSIVE REMEDY FOR EMPLOYEES IN THE NUCLEAR INDUSTRY WHO CLAIM THAT THEY HAVE BEEN DISCRIMINATED AGAINST FOR RAISING NUCLEAR SAFETY CONCERNS.

A. Section 210 Must Be Read *In Pari Materia* With Other Provisions Of The Comprehensive Federal Regulatory Regime Governing The Nuclear Industry, And When So Read It Provides An Exclusive Federal Remedy For Allegedly Retaliatory Acts Motivated By An Employee's Raising Nuclear Safety Concerns.

In 1978, Congress amended the Energy Reorganization Act of 1974 by adding a new Section 210, Pub. L. No. 95-601, 92 Stat. 2951 (1978), 42 U.S.C. § 5851. This provision, applicable only to the nuclear industry, provides specific administrative procedures and full compensatory remedies to employees of NRC licensees and their contractors who allege that they have been discriminated against for engaging in any "action to carry out the purposes" of the Energy Reorganization Act or the Atomic Energy Act of 1954, 42 U.S.C. §§ 2011 *et seq.*

Far from legislating in a regulatory vacuum, as petitioner implies was the case, Congress added this new safety provision—Section 210—to what is likely the most comprehensive federal regulatory scheme ever enacted. From the beginning, that scheme completely excluded state regulation and subsequently has permitted limited

regulation by the states only by express decree. When placed in its proper context, there is ample evidence that Congress intended Section 210 to be the exclusive remedy for employees in the nuclear industry who allege that they have been retaliated against for raising radiological safety concerns.

This Court has recounted the history of the regulation of the nuclear industry before. *Pacific Gas & Electric Co. v. State Energy Resources Conservation & Dev. Comm'n*, 461 U.S. 190, 206-12 (1983). In brief, Congress' first legislation in this area created a federal government monopoly over the production and use of fissionable material. Atomic Energy Act of 1946, ch. 724, 60 Stat. 755 (1946). In the Atomic Energy Act of 1954, Congress implemented its determination that the private sector should participate in the development of atomic energy for power production purposes, but only under the exclusive regulatory oversight of a federal agency. The 1954 Act thus created the Atomic Energy Commission ("AEC"), which was charged with the licensing of private construction, ownership, and operation of commercial power reactors and which retained exclusive jurisdiction to license the acquisition, transfer, possession, and use of nuclear materials. "Upon these subjects, no role was left for the States." *Pacific Gas & Electric Co.*, 461 U.S. at 207.

When Congress permitted states to regulate at all in this area, it did so expressly. Congress even found it necessary to provide expressly that the 1954 Act reserved to the states their traditional power to regulate the "generation, sale, or transmission of electric power produced through the use of nuclear facilities . . . ." Section 271, 42 U.S.C. § 2018. As the Court indicated in *Pacific Gas & Electric Co.*, there are very few instances in the statutes governing the nuclear industry in which Congress has relinquished power to the states.

In 1959, Congress added another such provision, Section 274, 42 U.S.C. § 2021. The 1959 amendment granted

the AEC the authority "by agreements with state governors to discontinue [the Commission's] regulatory authority over certain nuclear materials under limited conditions." *Pacific Gas & Electric Co.*, 461 U.S. at 209. Under such agreements, the NRC cedes its authority to "Agreement States," and consequently there is no "dual regulation" in such states. Thus, the 1959 amendment permitted state regulation of nuclear materials to a very limited extent and only where the state has entered into an explicit agreement with the federal government and restricted amounts of nuclear materials are involved. In the 1959 amendment Congress again included an express provision to make clear its intent with respect to the effect of Section 274 on pre-existing AEC and state regulatory authority.[2] Section 274(b)(4) and (c) make clear that the AEC retained its authority over large quantities of special nuclear material and with respect to the construction and operation of any production or utilization facility. 42 U.S.C. § 2021(b)(4), (c).[3]

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[2] In Section 274(k), 42 U.S.C. § 2021(k), Congress declared that Section 274's narrowly circumscribed provisions for the exercise of state authority should not be construed as implying any further restrictions on the states. Petitioner suggests that Section 274(k) creates an exemption from the generally preemptive effect of the Atomic Energy Act for all forms of state regulation of nuclear facilities for economic and other nonsafety purposes. Pet. Br. at 21-22. But this contention ignores this Court's pronouncement in *Pacific Gas & Electric Co.* that "Section 274(k), by itself, limits only the pre-emptive effect of 'this section,' that is, § 274, and *does not represent an affirmative grant of power to the States.*" 461 U.S. at 210 (emphasis added).

[3] Petitioner was employed at a GE fuel fabrication plant licensed by the NRC to possess and use special nuclear material pursuant to Section 53 of the Act (42 U.S.C. § 2073) and 10 C.F.R. Part 70 of NRC regulations. Because GE is authorized to possess large quantities of special nuclear material at the plant, much more than that contemplated in Section 274(b)(4) of the Act (42 U.S.C. § 2021(b)(4)), such a plant is subject only to NRC regulation, not "Agreement State" regulation. Thus, for purposes of preemption analysis, the GE plant is akin to the utilization facilities (i.e., nuclear reactors) that are similarly subject only to NRC regulation

In the Energy Reorganization Act of 1974, Congress restructured federal control over the nuclear industry. The Act abolished the AEC and assigned its licensing and regulatory functions to the NRC. The 1974 Act did not alter in any way the role the states were to play in the regulation of nuclear power. Finally, in 1978, Congress amended the Energy Reorganization Act by adding Section 210. Again, the new legislation provided no new authority to the states. On the contrary, the legislative history of Section 210 establishes that Congress intended the provision as an addition to legislation governing nuclear safety, and one that was to be meshed with the existing body of law.

> Finally, while new section 210 of the Energy Reorganization Act of 1978 provides the Department of Labor with new authority to investigate an alleged act of discrimination in this context and to afford a remedy should the allegation prove true, it is not intended to in any way abridge the [Nuclear Regulatory] Commission's current authority to investigate an alleged discrimination and take appropriate action against a licensee-employer, such as a civil penalty, license suspension or license revocation. Further, the pendency of a proceeding before the Department of Labor pursuant to new section 210 need not delay any action by the Commission to carry out the purposes of the Atomic Energy Act of 1954.

124 Cong. Rec. 29771 (1978) (statement of Sen. Hart).

In similar circumstances, this Court has consistently held that amending legislation such as Section 210 must be read *in pari materia* with the previously enacted legislative scheme of which it is made a part.[4] This rule, the

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(Section 274(c)(1) of the Act, 42 U.S.C. § 2021(c)(1)) and that are referred to in such cases as *Pacific Gas and Electric Co.*

[4] *See Haig v. Agee*, 453 U.S. 280, 300-01 (1981) (statute enacted 52 years after passage of the Passport Act and making it unlawful to travel abroad without a passport even in peacetime must be read *in pari materia* with the Passport Act); *Crawford Fitting Co. v. J.T. Gibbons, Inc.*, 482 U.S. 437, 445 (1987) (Fed. R. Civ. P. 54(d)

Court has explained, "is but a logical extension of the principle that individual sections of a single statute should be construed together, for it necessarily assumes that whenever Congress passes a new statute, it acts aware of all previous statutes on the same subject." *Erlenbaugh v. United States*, 409 U.S. 239, 244 (1972) (citation and footnote omitted).

Prior to the passage of Section 210 in 1978, it was generally recognized that Congress had preempted state regulation of matters subject to the federal regulatory scheme. In the leading preemption case of that time, *Northern States Power Co. v. Minnesota*, 447 F.2d 1143 (8th Cir. 1971), *aff'd mem.*, 405 U.S. 1035 (1972), the Eighth Circuit had held that Congress had preempted the state's attempt to regulate radioactive waste releases from nuclear power plants, even though Congress had said nothing about the states' role in this area and even though compliance with both the federal and state standards was possible. The circuit court found that the 1959 amendment to the Atomic Energy Act itself evidenced a congressional intent to exclude state regulation of the operation of nuclear power facilities, except to the extent that a state had entered into a cooperative agreement with the federal government to regulate certain nuclear materials.

> [T]he federal government has exclusive authority under the doctrine of pre-emption to regulate the construction and operation of nuclear power plants, which necessarily includes regulation of the levels of radioactive effluents discharged from the plant.

Id. at 1154.[5]

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must be read *in pari materia* with previously enacted limitations on the power of courts to tax litigants with the costs of litigation in 28 U.S.C. §§ 1821, 1920).

[5] *See also State of N.J., Department of Envtl. Protection v. Jersey Cent. Power & Light Co.*, 60 N.J. 102, 351 A.2d 337 (1976) (state regulation of cessation of nuclear power plant's functioning, emission of radioactive waste and dilution of that waste is impermissible because regulation of those matters has been vested in the AEC); *Commonwealth Edison Co. v. Pollution Control Bd.*, 5 Ill. App. 3d 800, 284 N.E.2d 342 (1972) (federal law preempts state environmental control statute to the extent it authorized state regulation of radiation from nuclear power plants).

Because Congress must necessarily have been aware of the body of nuclear energy law already in existence at the time of Section 210's enactment in 1978, it was surely cognizant of the structure and underlying policies of the Atomic Energy Act onto which Section 210 was engrafted, of the fact that only very narrowly circumscribed powers had been left to the states, and of the necessity for express provision for state authority in any area in which it was intended that the states be left free to act. When Section 210 is considered in its proper context, there can be no doubt as to its preemptive effect over claims such as petitioner's here.

Moreover, in the case of Section 210, it is not necessary to rely only upon the usual presumption that Congress was aware of the historical practice of making specific provision for any exceptions in the preemptive sweep of federal law governing the nuclear industry. At the very same time that Congress was considering Section 210, it also had before it proposals to amend Section 274.[6] Thus, the Congress that enacted Section 210 was itself directly involved at the same time with amending one of the few provisions of the Atomic En-

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[6] Indeed, when it passed the Senate, S. 2584, the bill that contained what was to become Section 210, also contained provisions (Sections 16-18 of the bill) to amend certain portions of Section 274 having to do with the exercise of state authority with regard to radiological by-product materials (uranium mill tailings). 124 Cong. Rec. 29785-87 (1978). These provisions were dropped from the conference bill, however, "in light of other legislation before the Congress to regulate mili tailings." H.R. Rep. No. 1796, 95th Cong. 2d Sess. 18, *reprinted in* 1978 U.S. Code Cong. & Admin. News 7304, 7311 (1978) (Conference Report). That other legislation was H.R. 13650, which passed the House and Senate on October 14, 1978. 124 Cong. Rec. 37545, 38230 (1978). Senate Bill 2584 also passed both houses on October 14, 1978. *Id.* at 38239, 37526 (1978).

ergy Act or the Energy Reorganization Act that expressly cedes limited authority to the states. Under these circumstances, it strains credulity to suggest that at the time of Section 210's passage there was an unstated congressional intention to cede authority to the states to provide alternative and duplicative remedies for conduct directly addressed by Section 210.

B. This Court's Decisions In *Pacific Gas & Electric Co.* And *Silkwood v. Kerr-McGee Corp.* Compel The Conclusion That The States Have No Authority To Regulate Conduct Such As That Alleged In Petitioner's Complaint.

This Court affirmed in *Pacific Gas & Electric Co.* that "the Federal Government has occupied the entire field of nuclear safety concerns, except the limited powers expressly ceded to the states." *Id.* at 212 (footnote omitted). In addition, the Court made it clear that any attempt by a state to regulate "the construction or operation of a nuclear powerplant," even if motivated solely by "nonsafety concerns," would be plainly impermissible because the exercise of such regulatory authority would "directly conflict with the [NRC's] exclusive authority" over such matters. *Id.* Moreover, in language that is particularly pertinent to resolving the issue in the present case, the *Pacific Gas & Electric Co.* decision emphasized the profoundly preemptive effect of federal occupation of this field.

> When the Federal Government completely occupies a given field or an identifiable portion of it, as it has done here, the test of pre-emption is whether "the matter on which the State asserts the right to act is *in any way* regulated by the Federal Act."

Id. at 212-13 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 236 (1947) (emphasis added)).

The language of petitioner's complaint in this case reveals that she has sought to bring a claim under state law that embraces matters squarely addressed by Section 210. The complaint's description of the "extreme and outrageous conduct" alleged asserts that such

conduct was "motivated by GE's desire to punish her for raising safety concerns" (J.A. 16, 20), that her employer was motivated by a desire to demonstrate that it would "severely punish employees who insisted on compliance with safety regulations and reported GE violations to the NRC as required by law" (J.A. 16), and that the treatment to which she allegedly had been subjected had all occurred "because she had exposed and threatened to continue to expose as sham, management's pretended concern with employee and public health and safety" at the facility where she had been employed (J.A. 16-17).

At bottom, then, her cause of action for intentional infliction of emotional distress consists of nothing more or less than claims that her employer retaliated against her because of her involvement in raising nuclear safety concerns, precisely the sort of conduct that Section 210 was intended to regulate. Thus, " 'the matter on which the State asserts the right to act,' " *Pacific Gas & Electric Co.*, 461 U.S. at 213—here the action of a nuclear industry employer in allegedly retaliating against one of its employees for raising concerns about nuclear safety —is directly the subject of federal regulation. Inasmuch as this is not one of the strictly circumscribed areas in which Congress has expressly preserved the traditional regulatory authority of the states, the application of North Carolina law to the facts alleged by petitioner is perforce preempted.

The Court's decision in *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238 (1984), reinforces the conclusion that petitioner's claim is preempted because it intrudes upon a field fully occupied by the federal government. The majority in that case held that state tort law remedies for personal injuries resulting from physical exposure to radiation are not preempted by federal law. In so holding, the Court also made clear that it was recognizing only a limited exception to the general rule enunciated in *Pacific Gas & Electric Co.* that all matters

concerning nuclear safety and the operation of nuclear facilities are the exclusive province of the federal regulatory regime.

The majority in *Silkwood* first noted that the decision of Congress to prohibit the states from intruding on the safety aspects of nuclear development had derived from a belief that the NRC was more qualified than the states to determine the appropriate safety standards to be employed at nuclear facilities. 464 U.S. at 250.

> If there were nothing more, this concern over the States' inability to formulate effective standards and the foreclosure of the States from conditioning the operation of nuclear plants on compliance with state-imposed safety standards arguably would disallow resort to state-law remedies by those suffering injuries from radiation in a nuclear plant. There is, however, ample evidence that Congress had no intention of forbidding the States to provide such remedies.

Id. at 250-51.

The evidence to which the majority opinion referred consisted of two critical facts. First, Congress had provided no federal remedy for the victims of such injuries. *Id.* Second, and "[m]ore importantly, the only congressional discussion concerning the relationship between the Atomic Energy Act and state tort remedies indicates that Congress assumed that such remedies would be available." *Id.*[7]

But neither of these factors is present in cases involving the application of state law to alleged acts of retaliation for raising nuclear safety concerns. In Section 210, Congress has provided an explicit and detailed federal administrative remedy for those who suffer retaliation under circumstances such as those alleged by petitioner here.

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[7] The Court also noted that in congressional deliberations on the 1966 amendments to the Price-Anderson Act, a provision that would have created a federal tort to replace existing state remedies had been expressly considered and rejected. *Id.* at 254-55.

Moreover, neither petitioner nor her supporting *amici* have pointed the Court to any evidence that Congress has at any time assumed that state tort remedies would be available in cases in which retaliation for raising nuclear safety concerns is alleged. Quite simply, there is no indication whatsoever in the legislative history of Section 210 or any of the other provisions of the Atomic Energy Act or the Energy Reorganization Act suggesting that Congress even considered, let alone chose to tolerate, the availability of state remedies in such cases.

The majority opinion in *Silkwood* frankly acknowledged that "there is tension between the conclusion that safety regulation is the exclusive concern of the federal law and the conclusion that a State may nevertheless award damages based on its own law of liability." *Id.* at 256. The Court also made clear that tolerance of that tension was possible only because the evidence of a congressional intent to allow it to exist was abundant, but then emphasized that applicability of its ruling to claims in other areas was not to be presumed:

> We do not suggest that there could never be an instance in which the federal law would pre-empt the recovery of damages based on state law. But *insofar as damages for radiation injuries are concerned*, pre-emption should not be judged on the basis that the Federal Government has so completely occupied the field of safety that state remedies are foreclosed but on whether there is an irreconcilable conflict between the federal and state standards or whether the imposition of a state standard in a damages action would frustrate the objectives of the federal law.

Id. (emphasis added). Absent the compelling evidence of congressional intent that supplied the foundation for the narrow exception recognized by the majority in *Silkwood* for radiation injury claims, the fact that Congress has completely occupied the field of nuclear safety compels the conclusion that state law remedies are preempted.

Petitioner seeks to avoid this straightforward application of the *Pacific Gas & Electric Co.* and *Silkwood* decisions by asserting that the interests of the states in granting their citizens the right to litigate intentional infliction of emotional distress claims have "nothing whatsoever to do with nuclear energy or nuclear power." Pet. Br. at 14. But if that were the test, the entirety of the Court's discussion of congressional intent in *Silkwood* would have been nothing more than surplusage, for it can just as well be said that the personal injury law of the states was also not conceived with nuclear energy in mind.

Moreover, petitioner's argument misses one of the central points of the Court's decision in *Pacific Gas & Electric Co.*, which is that the purpose underlying state laws affecting nuclear facilities only becomes relevant if the state is acting pursuant to authority expressly reserved to it by federal law.[8] Before even reaching its analysis of the purpose of the state law at issue in that case, the Court was careful first to emphasize that any state regulation of the construction or operation of a nuclear power plant "*even if enacted out of nonsafety concerns*, would nevertheless directly conflict with the NRC's exclusive authority over plant construction and operation." 461 U.S. at 212 (emphasis added).

Management of the workforce at a nuclear facility, including the exercise of the prerogatives to discipline and discharge employees, is indisputably a vital part of the operation of that facility. Especially where, as here, state law is sought to be applied to the exercise of management prerogatives in the context of a workplace dispute that is alleged to have at its core an issue of radiological safety, the suggestion that this would not constitute state regulation of the operation of a nuclear

[8] As is discussed *supra*, *Pacific Gas & Electric Co.* involved an extension of the traditional economic regulation of electric utilities, a sphere of state regulatory activity explicitly preserved by Section 271 of the Atomic Energy Act, 42 U.S.C. § 2018.

facility is simply untenable. Thus, whether thought was given in the conception of North Carolina emotional distress law to its effects on the operation of nuclear facilities has utterly no bearing on the fact that federal law preempts state intrusions in such matters, regardless of whether such conflicts with exclusive federal authority were intended by the authors of state law.

II. PETITIONER'S CLAIMS ARE PREEMPTED FOR THE FURTHER REASON THAT THE APPLICATION OF STATE LAW TO HER ALLEGATIONS OF RETALIATION WOULD STAND AS AN OBSTACLE TO, AND FRUSTRATE, FULL REALIZATION OF THE OBJECTIVES OF FEDERAL LAW GOVERNING THE REGULATION OF NUCLEAR FACILITIES.

Even if Congress had not completely occupied the field of nuclear safety, petitioner's action here must be held to be preempted because the application of state law in the circumstances of her case would "'stand[] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Pacific Gas & Electric Co.*, 461 U.S. at 204 (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). Indeed, when state law "presents the 'prospect of interference with the federal regulatory power,' then the state law may be pre-empted even though 'collision between the state and federal regulation may not be an inevitable consequence.'" *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 310 (1988) (quoting *Northern Natural Gas Co. v. State Corp. Comm'n*, 372 U.S. 84, 91-92 (1963)). And where an application of state law may frustrate the objectives of federal law, it is the effect rather than the purpose of the state law that controls the preemption analysis. *International Paper Co. v. Oulette*, 479 U.S. 481, 498-99 n.19 (1987); *Perez v. Campbell*, 402 U.S. 637, 651-52 (1971).

Permitting state court actions such as petitioner's would frustrate the intent of Congress to ensure expe-

ditious processing of Section 210 claims. While the statute of limitations in Section 210 is 30 days, 42 U.S.C. § 5851(b)(1), the limitations period applicable to petitioner's infliction of emotional distress claim under North Carolina law is apparently three years. Pet. App. 22a. Where Section 210 mandates that the Secretary of Labor issue her decision within 90 days in the administrative process embraced by Congress, 42 U.S.C. § 5851 (b)(2), it is common knowledge that litigation in the courts can take many years to conclude. The significance of these provisions calling for expeditious resolution of Section 210 claims is made more apparent when considered in conjunction with (a) the further requirement of Section 210(b)(1) that the Secretary of Labor notify the NRC upon receipt of a Section 210 complaint, and (b) the Memorandum of Understanding between the Department of Labor and the NRC in which they agree "to cooperate with each other to the fullest extent possible" in the investigation of Section 210 matters. 47 Fed. Reg. 54585 (1982).

Because radiological safety may be implicated in any Section 210 complaint, it is vital and in the public interest that the NRC be apprised at the earliest possible time of the allegations of an employee who claims to be the victim of retaliation for raising nuclear safety concerns. Such allegations of wrongdoing are important to the NRC for two reasons. First, they may involve issues of nuclear hardware or procedures that bear directly and immediately on safe operations. Second, they may also involve the qualifications (in terms of management ability and attitudes) of licensees to possess and use nuclear materials. This information must be timely received by the NRC to permit it to respond rapidly to such issues and to any "chilling effects" on the identification of safety concerns that cases of retaliation may cause among the workforce in general. *See Kansas Gas & Elec. Co. v. Brock*, 780 F.2d 1505, 1509 (10th Cir. 1985), *cert. denied*, 478 U.S. 1011 (1986) ("[I]ntertwined with an employment discrimination complaint

could be matters specifically concerning substantive questions of nuclear safety which are better determined by the NRC, a body with competence on nuclear issues.").[9]

The NRC, acting pursuant to its authority under Section 161 of the Atomic Energy Act, 42 U.S.C. § 2201, *see* 47 Fed. Reg. 30452 (1982), has promulgated regulations that are the correlative of Section 210. *E.g.*, 10 C.F.R. § 70.7 (1989).[10] Where the NRC determines that this regulatory provision has been violated, it may take action to (a) suspend, modify or terminate the licensee's license; (b) impose a civil penalty; or (c) initiate "[o]ther enforcement action." *Id.*

This fundamental scheme for protecting public health and safety will be undermined if the decision of when and in what forum an action by an aggrieved party should be brought is left to the choice of that party. And this would be doubly true if plaintiffs could simply rename their retaliation claims, calling them infliction of emotional distress claims as petitioner has done here, and thereby avail themselves of the opportunity to ob-

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[9] Indeed, the Tenth Circuit in *Brock* initially noted, in its review of an Order of the Secretary in a Section 210 proceeding, that it was "troubled by a jurisdictional question. . . . [T]he Secretary of Labor should not be involved with matters pertaining to nuclear safety, such matters more appropriately coming within the expertise of the NRC." *Id.* at 1508. The court concluded, however, that the Memorandum of Understanding entered into between the two agencies acted to "safeguard the rights of all parties involved in such an employment proceeding." *Id.* at 1509. The Tenth Circuit has subsequently ruled that states have no role to play in this context. *Masters v. Daniel Int'l Corp.*, 895 F.2d 1295 (10th Cir. 1990) (Section 210 preempts state law claim for retaliatory discharge).

[10] The proscriptive language of 10 C.F.R. § 70.7, and parallel provisions in §§ 30.7, 40.7, 50.7, 60.9, and 72.10, is essentially the same as that of Section 210. *See also* 10 C.F.R. § 19.20 ("Employment discrimination by a licensee or a contractor or subcontractor of a licensee against an employee for engaging in protected activities . . . is prohibited.").

tain millions of dollars (or $2.3 *billion*, as petitioner has sought here) in punitive damages. In such circumstances there would be few who would retain any interest in having their disputes resolved through the administrative process that Congress went to the trouble to create.

This Court's opinions have consistently indicated that the creation of a detailed and comprehensive scheme of administrative remedies by Congress gives rise to a presumption that resort to alternative fora, which may offer procedural advantages and the possibility of more attractive remedies to those seeking relief, was not contemplated. *See, e.g., Great American Fed. Sav. & Loan Ass'n v. Novotny*, 442 U.S. 366, 375-76 (1979) (plaintiffs whose rights under Title VII of the Civil Rights Act of 1964 had been violated not allowed to seek remedies under 42 U.S.C. § 1985(3) because of factors such as the availability of longer statute of limitations, punitive damages and jury trial under the latter statute, and "[p]erhaps most importantly, the complaint could completely bypass the administrative process, which plays such a crucial role in the scheme established by Congress . . . ."); *Brown v. General Servs. Admin.*, 425 U.S. 820, 832 (1976) (balance, completeness and structural integrity of administrative procedure established in Title VII of Civil Rights Act of 1964 for processing claims of government employees held inconsistent with assertions that such remedies were designed only to supplement other judicial remedies).[11]

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[11] *See also Brown & Root, Inc. v. Donovan*, 747 F.2d 1029, 1035 (5th Cir. 1984):

> The fact that Congress has produced so many detailed provisions governing the nuclear industry indicates the legislature may well have attempted to approach the line where it believed the added costs of regulation exceed benefits. *Edgar v. MITE*, 457 U.S. 624 (1982) (holding that additional protection afforded investors by state securities statutes would "overprotect" investors to their detriment); *see* Easterbrook, *Statutes' Domain*, 50 U.Chi.L. Rev. 533, 542 (1983). If this is so, for a court to interpret the statute to authorize "more in the same vein" will result in regulation where costs exceed benefits, upsetting the balance intended by Congress.

Moreover, it is especially doubtful that Congress intended to permit those claiming that they have been retaliated against for raising nuclear safety concerns to have access to punitive damages awards in state tort actions where such awards would only replicate mechanisms in the federal regulatory scheme designed to effect the same objective. "[D]eterrence of future egregious conduct is a primary purpose . . . of punitive damages." *Smith v. Wade*, 461 U.S. 30, 49 (1983). But in the case of conduct that would violate Section 210 and 10 C.F.R. § 70.7, the NRC already has the authority to impose civil penalties for deterrent purposes. Atomic Energy Act § 234, 42 U.S.C. § 2282.[12] Indeed, the NRC has already exercised that authority to impose a $20,000 civil penalty against respondent for the very conduct at issue in the present proceedings. *In re General Electric Co.*, DD-89-1, 29 N.R.C. 325, 334 (1989) (based on findings of the Administrative Law Judge in petitioner's Section 210 proceeding). *See* Pet. App. 57a-58a.[13] As this Court has held, a conflict between federal and state law is imminent whenever both federal and state remedies are brought to bear on the same activity. *Wisconsin Dep't of Indus. v. Gould, Inc.*, 475 U.S. 282, 286 (1986) (holding state law preempted that imposed sanctions on employers that repeatedly violated federal labor laws).

Finally, that Congress chose in Section 210(g) to deny a remedy under federal law to employees who themselves commit a violation of the Atomic Energy Act or the

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[12] The regulatory provisions relating to NRC enforcement actions and the imposition of civil penalties in appropriate cases are found at 10 C.F.R. Part 2, App. C (1989).

[13] *See also In re Toledo Edison Co.*, EA 88-234 (Nov. 21, 1988) (imposing $80,000 penalty for violation of 10 C.F.R. § 50.7, and ordering that license be modified to require notification of employee involvement in safety-related matters); *In re Tennessee Valley Auth.*, EA 86-093 (July 10, 1986) (imposing $150,000 penalty for violations of § 50.7).

Energy Reorganization Act is likewise supportive of the conclusion that petitioner's claims in this case are pre-empted.[14] Whenever Congress erects a comprehensive federal scheme, combining action (such as providing a remedy for most employees subjected to retaliation for raising nuclear safety concerns) with inaction (such as denying remedies otherwise available to those who themselves violate the law), a "pre-emptive inference" may be drawn. *Puerto Rico Dep't of Consumer Affairs v. Isla Petroleum Corp.*, 485 U.S. 495, 503 (1988).

This inference cannot be dispelled by offering, as petitioner does (Pet. Br. 40 n.18), the facile suggestion that permitting employers to raise Section 210(g) as a defense to state infliction of emotional distress claims avoids any "actual conflict" between the two bodies of law. The critical question, quite simply, is not whether an "actual conflict" can be avoided, but whether the application of state law "presents the 'prospect of interference with the federal regulatory power.'" *Schneidewind*, 485 U.S. at 310. The existence of a possibility that an individual whose own illegal acts have eliminated her eligibility for a federal remedy might nevertheless obtain a remedy, including punitive damages, in a state infliction of emotional distress action would completely subvert the congressional judgment on how the balance should be struck in such situations. Moreover, even if employers would be in a position to assert a defense to a state law claim based on Section 210(g) (a matter that may well have to be determined under the law of the state in which the claim is brought), state courts and juries would inevitably have to become entangled in the administration of the Atomic Energy Act. For a state court or jury to rule on a Section 210

[14] Section 210(g), 42 U.S.C. § 5851(g), provides:

> Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter or of the Atomic Energy Act of 1954, as amended.

(g) defense, they would first have to determine whether the employee in fact "cause[d] a violation of any requirement of" the Energy Reorganization Act or the Atomic Energy Act—a question appropriately resolved only with the assistance of considerable technological expertise, and a question to which Congress intended that there be a uniform answer.

In sum, each of the three aspects of the federal statutory scheme cited by the district court (Pet. App. 19a-24a) in support of its conclusion that petitioner's claims were preempted demonstrates that the application of state law to such claims would inevitably interfere with the fulfillment of objectives embodied in federal law. In the absence of clear evidence of a congressional intent to tolerate such interference, claims such as petitioner's are necessarily preempted.

III. THE DECISIONS OF THE COURTS BELOW ARE CONSISTENT WITH THE PREEMPTION PRINCIPLES ARTICULATED BY THIS COURT IN CASES ARISING UNDER THE LABOR MANAGEMENT RELATIONS ACT.

It is, of course, in the context of the history and comprehensive scope of federal nuclear safety regulation that petitioner's claim must be analyzed. Nonetheless, petitioner and supporting *amici* contend that the decisions of the courts below are not consonant with the principles articulated by this Court in federal labor law preemption cases. But as demonstrated below, the lower courts' rulings that petitioner's claim is preempted are in fact entirely consistent with those principles.

Shortly after Congress passed the National Labor Relations Act ("NLRA") in 1935, this Court ruled that the Act, while silent on the role states were to play, preempted state regulation of matters that Congress had entrusted to the jurisdiction of the NLRB. *See Sears, Roebuck & Co. v. San Diego County Dist. Council of Carpenters*, 436 U.S. 180, 190-91 (1978); *San Diego*

Bldg. Trades Council v. Garmon, 359 U.S. 236 (1959).[15] In *Garmon*, the Court ruled that state laws regulating conduct arguably governed by Sections 7 or 8 of the Act, 29 U.S.C. §§ 157, 158, cannot stand because "Congress has entrusted administration of the labor policy for the Nation to a centralized administrative agency, armed with its own procedures, and equipped with its specialized knowledge and cumulative experience." *Id.* at 242. This strand of LMRA displacement of state law has been styled as "*Garmon* preemption."

The need to protect the "primary jurisdiction" of federal agencies charged by Congress to administer complex and interrelated federal schemes—the underpinning of *Garmon*—likewise dictates that petitioner's claim in this case has been preempted. Under the Atomic Energy Act and the Energy Reorganization Act, Congress has vested the NRC with the responsibility to regulate the conduct of its licensees. The Commission in fact long ago assumed the authority to investigate allegations of retaliation against employees wno have attempted to pursue the safety goals of nuclear regulation by voicing nuclear safety concerns. *E.g.*, 10 C.F.R. § 19.16(c) ("No licensee shall discharge or in any manner discriminate against any worker because such worker has" voiced nuclear safety concerns.) (promulgated in 1973, 38 Fed. Reg. 22217, 22219 (1973), superseded in 1982 when 10 C.F.R. § 70.7 and its counterparts were first promulgated, 47 Fed. Reg. 30452 (1982)). And, as noted above, the Commission has imposed penalties on its licensees when allegations of discrimination have been substantiated, either through the Commission's own investigation or in Department of Labor proceedings.

In 1978, Congress extended to the Secretary of Labor the power to provide full compensatory remedies to ag-

[15] Congress amended the Act in 1947, Labor Management Relations Act, ch. 120, 61 Stat. 136 (1947), 29 U.S.C. §§ 141-187 (1988). The Act will hereinafter be cited as the "LMRA."

grieved employees who comply with the procedures set forth in Section 210, but was careful not to curtail the pre-existing authority of the Commission in this field. 124 Cong. Rec. 29771 (1978). The Commission and the Secretary fulfill complementary and supportive roles in this scheme. *See Norman v. Niagara Mohawk Power Corp.*, 873 F.2d 634, 637 (2d Cir. 1989) ("In a field as specialized and technical as that of nuclear energy, the importance of this interplay between the two agencies cannot be overemphasized.") (citing, *inter alia*, *Garmon* in holding that Section 210 is an exclusive remedy).

Where, as in *Garmon* and this case, Congress has created an intricate scheme that directs federal agencies to address and remedy a discrete type of dispute, no room remains for states to regulate in the same field. Thus, what has been said of *Garmon* also holds true here: "The technique of administration and the range and nature of those remedies that are and are not available is a fundamental part and parcel of the operative legal system established by the" federal scheme, and even "supplemental" state laws may not apply. *Amalgamated Ass'n of Motor Coach Employees v. Lockridge*, 403 U.S. 274, 287 (1971).

Here, petitioner's claim is in all material respects identical to that which she has already presented to the Secretary of Labor: that the respondent engaged in acts calculated to cause her emotional distress because she had raised nuclear safety concerns. Pet. App. 32a-40a; J.A. 7-20. In light of this "identity of issues," petitioner's reliance on *Farmer v. United Brotherhood of Carpenters*, 430 U.S. 290 (1977), is misplaced. In an unfair labor practice proceeding, the NLRB would not be concerned with the emotional harm visited upon a charging party by conduct arguably subject to the LMRA. *Id.* at 304 ("Whether the statements or conduct of the respondents also caused Hill severe emotional distress and physical injury would play no role in the Board's disposition of

the case.").[16] In contrast, petitioner's allegation that respondent intentionally caused her mental distress because she had voiced safety concerns was an issue actually litigated in her claim for compensatory relief before the Department of Labor. In sum, petitioner's reliance on *Farmer* ignores the fact that the Department of Labor entertained a claim for redress of the very injury of which she complains, while the NLRB would not have done so.

Moreover, in each of the cases relied on by petitioner in which the Court has ruled that the LMRA does not preempt a state claim, the Court emphasized that the Board would have been powerless to provide a full remedy because in enacting the LMRA "Congress did not establish a general scheme authorizing the Board to award full compensatory damages for injuries caused by wrongful conduct." *International Union, United Auto. Workers v. Russell*, 356 U.S. 634, 642-43 (1958).[17] In

[16] *See also Linn v. United Plant Guard Workers of America, Local 114*, 383 U.S. 53, 63-64 (1966) ("The malicious publication of libelous statements does not in itself constitute an unfair labor practice. . . . The injury that the statement might cause to an individual's reputation—whether he be an employer or union official—has no relevance to the Board's function."); *Belknap v. Hale*, 463 U.S. 491, 511 (1983) ("It is no less true here than it was in *Linn v. Plant Guard Workers* . . . that '[t]he injury' remedied by the state law 'has no relevance to the Board's function.'"). *Cf. Vaca v. Sipes*, 386 U.S. 171, 182 n.8 (1967) (The "public interest in effectuating the policies of the federal labor laws, not the wrong done the individual employee, is always the Board's principal concern in fashioning unfair labor practice remedies.").

[17] *International Ass'n of Machinists v. Gonzales*, 356 U.S. 617, 621 (1958) ("Although, if the unions' conduct constituted an unfair labor practice, the Board might possibly have been empowered to award back pay, in no event could it mulct in damages for mental or physical suffering."); *United Constr. Workers v. Laburnum Constr. Co.*, 347 U.S. 656, 663-65 (1954) ("Here Congress has neither provided nor suggested any substitute for the traditional state court procedure for collecting damages for injuries caused by tortious conduct. . . . The Labor Management Relations Act sets up no general compensatory procedure except in such minor supplementary ways as the reinstatement of wrongfully discharged employees with

contrast, Congress devised Section 210 expressly to provide full compensatory remedies to employees who have been discriminated against because they have engaged in action to carry out the purposes of federal nuclear legislation. Section 210(b)(2)(B) provides that, in addition to providing reinstatement and backpay, "the Secretary may order [the respondent] to provide compensatory damages to the complainant." 42 U.S.C. § 5851(b)(2)(B). The statute unambiguously permits the Secretary to compensate the complainant for all losses sustained in connection with the alleged discrimination.[18] Indeed, petitioner had herself secured from the administrative law judge a judgment under Section 210 awarding $70,000 as compensation for mental suffering and other damages before the Secretary ruled that her claim had not been timely filed. Pet. App. 55a.[19]

back pay."); *Linn*, 383 U.S. at 63-64 ("The Board can award no damages, impose no penalty, or give any other relief to the defamed individual."); *Farmer*, 430 U.S. at 304 ("[T]he Board could not award Hill damages for pain, suffering, or medical expenses."); *Belknap*, 463 U.S. at 511 ("'The Board can award no damages, impose no penalty, or give any other relief' to the plaintiffs in this case."); *see also Lockridge*, 403 U.S. at 318 (White, J., dissenting) (noting that the Court's decisions in *Russell*, *Laburnum*, and *Linn* were all based on the "inadequacy of the existing Board procedure to provide suitable remedies for those injured as a result of the conduct").

[18] *DeFord v. Secretary of Labor*, 700 F.2d 281, 288 (6th Cir. 1983) ("Here, it is clear that Congress intended to allow 'compensatory damages,' and nothing less. The statute is not ambiguous on this point."); *DeFord v. Tennessee Valley Auth.*, Case No. 81-ERA-1, slip op. at 4 (Secretary's Order on Remand) (Apr. 30, 1984) (awarding $10,000 to Section 210 complainant for "mental pain and suffering and damage to reputation").

[19] Petitioner's claim (Pet. Br. 31 n.12) that *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399 (1988), "lays to rest," for *Garmon* preemption purposes, the distinction this Court has drawn for forty years regarding claims for which the NLRB could provide a remedy and those for which it could not reveals a misunderstanding of the different strands of labor preemption. *Lingle*, a case addressing preemption by Section 301 of the LMRA, 29 U.S.C. § 185, expressly cautioned against such confusion, emphasizing that

Garmon notions of "primary jurisdiction" preemption, then, fortify the conclusion that federal laws regulating the nuclear industry preempt petitioner's claim because it seeks the application of state law to matters Congress has entrusted to the regulatory authority of federal agencies. Nevertheless, it is incorrect to conclude that the scope of *Garmon* preemption delimits the preemptive scope of nuclear regulatory legislation. Section 210, unlike the "prohibited conduct" provisions of the LMRA, was enacted in an area where Congress had already legislated comprehensively and where a federal agency already exercised dominion over the conduct for which Section 210 provides a remedy. Indeed, Section 210 regulates an industry over which the federal government originally held a monopoly and state regulation of which has always been narrowly circumscribed. If anything, the preemptive inferences to be drawn from the context of Section 210 are more compelling than those attending the LMRA.

The distinctions between preemption in the nuclear regulatory arena and under *Garmon* make petitioner's reliance on *Farmer* particularly inapt. By attempting to fit her claim within the "*Farmer* exception," petitioner erroneously assumes that the balancing of state and federal interests applicable in *Garmon* preemption can also be properly applied to nuclear regulatory preemption. As demonstrated above, because Congress has completely occupied the entire field of nuclear safety, no state law regulating in that field may apply. Simply put, federal occupation of the field leaves no room for a balancing of state and federal interests. *See Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 214 n.9 (1985) ("The present tort suit would allow the State to provide a rule of decision where Congress has mandated that federal law should govern. In this situation the balancing of state and federal interests required by *Gar-*

Garmon preemption and § 301 preemption involve different inquiries. 486 U.S. at 409 n.8.

mon pre-emption is irrelevant, since Congress . . . has provided that federal law must prevail.").

For this reason, petitioner's claim is preempted regardless of whether it involves interests "deeply rooted in local feeling and responsibility," *Garmon*, 359 U.S. at 244, or laws of only passing interest. Moreover, petitioner cannot contend that her claim is of only "peripheral" concern to the federal scheme inasmuch as her claim, as demonstrated above, is among those that Congress has vested the Secretary with authority to address. *Norman*, 873 F.2d at 637 (distinguishing *Farmer* and holding that Section 210 is an exclusive remedy) ("We are not dealing here with a collateral matter that is only peripherally related to the safety concerns implicit in section 210 . . . . [T]he gravamen of the complaint herein is section 210 harassment.").[20] Moreover, because petitioner's claim presents precisely the same issue that the Secretary can address and remedy, and alleges conduct for which the NRC can impose an appro-

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[20] *Farmer*, either as an "exception" to or defining the limits of the principles set out in *Garmon*, is unique to that type of preemption and cannot simply be applied as petitioner attempts to do in this case, to all other areas in which Congress has displaced state regulation. Indeed, a host of other federal laws have been held to preempt state law intentional infliction of emotional distress claims arising in the employment setting. *E.g., Jackson v. Southern California Gas Co.*, 881 F.2d 638, 645-46 (9th Cir. 1989) (*Farmer* not applicable to LMRA § 301 preemption; intentional infliction of emotional distress claim preempted); *Pane v. RCA Corp.* 868 F.2d 631, 635 (3d Cir. 1989) (ERISA preempts intentional infliction of emotional distress claim); *Atkinson v. Gates, McDonald & Co.*, 838 F.2d 808 (5th Cir. 1988) (comprehensive scheme embodied in Longshoremen and Harbor Workers' Compensation Act preempts state law claim for intentional infliction of emotional distress); *Mayon v. Southern Pac. Transp. Co.*, 805 F.2d 1250, 1252-53 (5th Cir. 1986) (*Farmer* not applicable to Railway Labor Act preemption); *Lehman v. Morrissey*, 779 F.2d 526 (9th Cir. 1985) (per curiam) (remedial procedures created by Civil Service Reform Act preempt federal employee's claim for intentional infliction of emotional distress); *Binkley v. Loughran*, 714 F. Supp. 768, 771 (M.D.N.C. 1988) (LMRA § 301 preempts intentional infliction of emotional distress claim under North Carolina law).

priate penalty, the state's interest in compensating victims of socially intolerable conduct and society's interest in punishing a nuclear licensee for engaging in such conduct, are fully accomplished by the provisions of Section 210 and the Atomic Energy Act.

In sum, there is no merit to petitioner's contention that the Atomic Energy Act and the Energy Reorganization Act do not preempt her claim because the LMRA might not do so. In both the labor and nuclear arenas Congress has provided interrelated schemes of law, administrative procedures, and remedies; and state laws governing the same conduct regulated by the federal scheme are necessarily preempted. It does not follow, however, that an intentional infliction of emotional distress claim that would escape *Garmon* preemption also escapes Section 210 preemption, because the Secretary, unlike the NLRB, has been assigned to address such claims where, as here, they are premised upon retaliation for raising nuclear safety concerns. For these reasons, the decisions of the courts below are fully consistent with the principles of federal labor law preemption.

CONCLUSION

For the foregoing reasons, the judgment of the United States Court of Appeals for the Fourth Circuit should be affirmed.

Respectfully submitted,

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